

Department of Energy

970.2703-1

provisions and other related provisions for the Department of Energy contracts for the management and operation of DOE's major sites or facilities, including the conduct of research and development and nuclear weapons production, and contracts which involve major, long-term or continuing activities conducted at a DOE site.

970.2702 Patent related clauses.

970.2702-1 Authorization and consent.

Contracting officers must use the clause at 970.5227-4, Authorization and Consent, instead of the clause at 48 CFR 52.227-1.

970.2702-2 Notice and assistance regarding patent and copyright infringement.

Contracting officers must use the clause at 970.5227-5, Notice and Assistance Regarding Patent and Copyright Infringement, instead of the clause at 48 CFR 52.227-2.

970.2702-3 Patent indemnity.

(a) Contracting officers must use the clause at 970.5227-6, Patent Indemnity—Subcontracts to assure that subcontracts appropriately address patent indemnity.

(b) Normally, the clause at 48 CFR 52.227-3 would not be appropriate for an M&O contract; however, if there is a question, such as when the mission of the contractor involves production, the contracting officer must consult with local patent counsel and use the clause where appropriate.

970.2702-4 Royalties.

Contracting officers must use the solicitation provision at 970.5227-7, Royalty Information, and the clause at 970.5227-8, Refund of Royalties instead of the provision at 48 CFR 52.227-8 and the clause at 48 CFR 52.227-9, respectively.

970.2702-5 Rights to proposal data.

Contracting officers must include the clause at 48 CFR 52.227-23, Rights to Proposal Data, in all solicitations and contracts for the management and operation of DOE sites and facilities.

970.2702-6 Notice of right to request patent waiver.

Contracting officers must include the provision at 970.5227-9 in all solicitations for contracts for the management and operation of DOE sites or facilities.

970.2703 Patent rights.

970.2703-1 Purposes of patent rights clauses.

(a) DOE sites and facilities are managed and operated on behalf of the Department of Energy by a contractor, pursuant to management and operating contracts that are generally awarded for a five (5) year term, with the possibility for renewal. Special provisions relating to patent rights are appropriately incorporated into an M&O contract because of the unique circumstances and responsibilities of managing and operating a Government-owned facility, as compared to other federally funded research and development contracts.

(b)(1) *Technology transfer mission clause.* In accordance with Public Law 101-189, section 3133(d), DOE may grant technology transfer authority to M&O contractors operating a DOE facility. Generally, M&O contractors have the right to elect to retain title to inventions made under the contract, whether a nonprofit or educational organizations, as a result of 35 U.S.C. 200 *et seq.* (Bayh-Dole Act), or a large business, as a result of a class patent waiver issued pursuant to 10 CFR part 784. Under such contracts, the M&O contractor assumes responsibilities for commercializing retained inventions, in accordance with the Technology Transfer Mission clause provided at 970.5227-3. That clause also governs such activities as the distribution of royalties earned from inventions made under the contract and the transfer of patent rights in inventions made under the contract to successor contractors.

(2) If the M&O contractor is a nonprofit organization or small business firm having technology transfer authority, the following clauses are inserted into the M&O contract: 970.5227-3 and 970.5227-10.

(3) If the M&O contract has technology transfer as a mission and is to